

### **REMARKS**

The present amendments and remarks are in response to the Office Action of October 3, 2005. Claims 1-11 have been canceled and newly added claims 12-22 are currently pending.

Reconsideration of the application is respectfully requested in view of the following responsive remarks. For the Examiner's convenience and reference, the Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

In the Office Action, the following rejections were issued:

- (1) Claims 1-11 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
- (2) Claims 1-11 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2004/0185129 (hereinafter "Vuksan") in view of Patent Cooperation Treaty (PCT) No. WO9962356 (hereinafter "Coates").

#### **Rejections under 35 U.S.C. 112**

The Examiner has rejected claims 1-11 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants submit that newly added claims 12-36 overcome such rejections.

Regarding the word "expeller," the Examiner has expressed concern regarding the clarity of this term. Applicants submit that the definition of the word "expeller" refers to a press used to extract oil from corn, soybeans and other seeds as taught by some dictionaries. Therefore, an "expeller sub-product" would refer to oil or residual seed fiber material extracted or remaining after going through such a process. Thus, Withdrawal of these rejections is respectfully requested.

Regarding the phrase, "partially low fat flour," the Applicant has stated throughout the specification the meaning of this term. As an example, this term is defined on page 2 as "having a high content of fatty acids, mainly  $\Omega_3$  type, which will incorporate natural antioxidants that will prevent such fatty acids from being degraded."

Withdrawal of these rejections is respectfully requested.

**Rejections under 35 U.S.C. 103(a)**

Before discussing the rejections under 35 U.S.C. 103(a), it is thought proper to briefly state what is required to sustain such a rejection. The issue under § 103 is whether the PTO has stated a case of *prima facie* obviousness. According to the MPEP § 2142, the Examiner has the burden and must establish a case of *prima facie* obviousness by showing some motivation in a prior art reference to modify that reference, or combine that reference with multiple references, to teach all the claim limitations in the instant application. Applicants respectfully assert the Examiner has not satisfied the requirement for establishing a case of *prima facie* obviousness in this rejection.

Claims 1-11 were rejected under 35 U.S.C. 103(a) as being unpatentable over Vuksan in view of Coates. In particular, the Examiner has cited Vuksan because the Examiner believes that Vuksan teaches a flour producing process similar to the claimed invention. Applicants respectfully disagree. Vuksan discloses uses of *Salvia Hispanica* L. (Chia) for controlling, reducing blood glucose levels, preferably post-prandial blood glucose levels. In paragraph [0086], Vuksan recites that chia seed was administered to subjects in the following form: “as a ground powder, alone as whole seed or ground powder, consumed alone, sprinkled on a meal, incorporated as supplement in bread or other foods regularly consumed by people.” Vuksan however, does not describe a flour producing process as claimed by the Applicant, which requires pressing under temperature control steps, cooling steps, and a grinding step. Vuksan, merely states that the chia seeds can be ground into powder and used in various food forms.

Conversely, Coates is drawn towards enhanced foods which has significantly higher omega-3 content through the use of oil from the *salvia hispanica* seed. Further, the Abstract recites that the *salvia hispanica* seed is ground into flour which is blended with traditional grain based flour for the preparation of cookies, breads, nutrition bars, crackers, and the like. Other embodiments are taught, that utilize *salvia hispanica* seeds to feed chicken, whereby the omega-3 content from the seeds are passed to the produced chicken eggs. The omega-3 enriched eggs can then be consumed by a human to receive the benefits therefrom. However, the application only teaches that the *salvia hispanica* seeds are ground by using traditional methods to produce the flour. Again, Coates does

not teach of a pressing (under temperature control) step, a cooling step, and a grinding step to obtain the flour.

The present invention, however, teaches a process for producing a partially low-fat flour having a high content of stabilized polyunsaturated fatty acid. The process can include i) selecting a plurality of *Salvia Hispanica* L. seeds; ii) incorporating the plurality of *Salvia Hispanica* L. seeds into pressing equipment; iii) pressing under temperature control the plurality of *Salvia Hispanica* L. seeds with the pressing equipment (which defattens the seeds to obtain an oil and an expeller sub-product therefrom, and where a change in ratio between polyunsaturated fatty acids and antioxidants contained within the seeds is obtained); iv) cooling the expeller sub-product to room temperature; and v) grinding the expeller sub-product to obtain different particle sizes of the low-fat flour having a high content of stabilized polyunsaturated fatty acid.

Neither reference, Coates nor Vuksan, teach of a process producing a partially low-fat flour having a high content of stabilized polyunsaturated fatty acid. Both, references teach that the *Salvia Hispanica* seeds can be ground into powder or flour and incorporated into food products to enhance the food product with omega-3 content. Specifically, Coates, states that “the seeds are cracked or crushed to release the seed’s omega-3 rich oil. The crushing or cracking of the chia seed is accomplished using any of the traditional methods well known to those of ordinary skill in the art. When crushed or cracked, the chia seed releases its omega-3 oil which is absorbed by the surrounding grain based feed.” (pages 2, ln 30 through page 3, ln 3). Further, in one embodiment, “the *salvia hispanica* seed is ground into flour which is blended with traditional grain based flour for the preparation of cookies, breads, nutrition bars, crackers, and the like.” (page 4, lines 8-10). Coates, however, does not teach of a specific flour producing process that utilizes the steps as recited in claim 12 above, where the seeds are pressed under temperature control, defatted (where oil is separated from an expeller sub-product), cooled, and grinded to produce the claimed low-fat flour. Therefore, without these teachings, or a suggestion to modify the references to arrive at the claimed invention, the claimed invention cannot be considered obvious. Since claim 12 recites patentable subject matter, the other claims depending therefrom are believed to also be allowable. Accordingly, it is respectfully requested that these rejections be withdrawn.

**CONCLUSION**

In view of the foregoing, Applicants believe that claims 1-11 present allowable subject matter and allowance is respectfully requested. If any impediment to the allowance of these claims remains, and such impediment could be resolved during a telephone interview, the Examiner is invited to telephone, Gary P. Oakeson at (801) 566-6633, so that such issues may be resolved as expeditiously as possible.

Please charge any additional fees except for Issue Fee or credit any overpayment to Deposit Account No. 20-0100.

Dated this 18 day of January, 2006.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gary P. Oakeson", is written over a horizontal line.

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